

TITLE 22
CHAPTER 3
“FAIR LABOR STANDARDS”

ARTICLE 1
MINIMUM WAGE AND HOUR ACT

§3101. TITLE. This Chapter may be cited as the “Minimum Wage and Hour Act of Guam.”

(Added by P.L. 5-143, as GC Section 45000, effective 11/9/60; renumbered to 46000 & amended by P.L. 8-11, effective 3/05/65; 1994 codification as §3101).

§3102. DECLARATION OF POLICY. It is declared to be the policy of this chapter: (a) to establish minimum wage and maximum hour standards at levels consistent with the public health, efficiency and general well-being of workers; (b) to safeguard existing minimum wage and maximum hour standards which are adequate to the health, efficiency and general well-being of workers from the effects of the serious and unfair competition resulting from wage and hour standards detrimental to the health, efficiency, and general well-being of workers; and (c) to increase employment opportunities.

(Added by P.L. 5-143, as GC Section 45001, effective 11/9/60; renumbered to 46001 & amended by P.L. 8-11, effective 3/5/65; 1994 codification as §3102.)

§3103. WAGE AND HOUR COMMISSIONER. This Chapter will be administered by a Wage and Hour Commissioner, who shall be the Director of Labor.

(Added by P.L. 5-143, as GC Section 45002, effective 11/9/60; renumbered to 4002 & amended by P.L. 8-11, effective 3/5/65; amended by P.L. 9-238, effective 7/1/68; 1994 codification as §3103.)

§3104. DEFINITIONS. As used in this Chapter:

- (1) “Commissioner” means the Wage and Hour Commissioner.
- (2) “Employ” includes to permit or suffer to work.
- (3) “Employer” includes any individual, partnership, association, corporation, business trust, legal representative, Government entity or instrumentality or any organized group of persons, acting directly or indirectly in the interest of an employer in relation to an employee, but

shall not include the United States Government except when engaged in Non-appropriated Fund activities.

- (4) “Employee” includes any individual employed by an employer, but shall not include any individual employed:**
 - (a) in agriculture for any workweek in which the employer of the individual employs less than 10 persons; (b) in domestic employment in or about a private home.**
- (5) “Industry” means a trade, business, industry, or branch thereof, or group of industries in which individuals are employed.**
- (6) “Wage” means (except as the Wage and Hour Commissioner may provide under §3116) legal tender of United States, or checks on banks convertible into cash on demand at full face value thereof and in addition thereto the reasonable cost, as determined by the Commissioner, to the employer of furnishing an employee with board, lodging or other facilities if such board, lodging or other facilities are customarily furnished by such employer to his employees but shall not include tips or gratuities of any kind: Provided, that the cost of board, lodging or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.**
- (7) “Week” means any period of seven (7) consecutive days.**
- (8) “Agriculture” means agriculture as defined in Section 3(f) of the Federal Fair Labor Standards Act of 1938, or as the same may be amended from time to time.**

(Added by P.L. 5-143, as GC Section 45003, effective 11/9/60; renumbered to 46003 by P.L. 8-11; Item (4) amended by P.L. 8-11, effective 3/5/65 and P.L. 8-137, effective 6/24/66, and P.L. 9-159, effective 6/1/68; Subparagraph (3) amended by P.L. 11-167, effective 9/1/72; 1994 codification as §3104.)

§3105. MINIMUM WAGES. Every employer shall pay each person employed by him wages at not less than the following rates:

- 1. Effective November 9, 1960, \$1.00 per hour;**
- 2. Effective July 29, 1966; \$1.25 per hour;**
- 3. Effective June 1, 1968, \$1.40 per hour;**

4. Effective March 14, 1969; \$1.60 per hour;
5. Effective August 6, 1970 – for the period ending July 1, 1971, \$1.75 per hour;
6. For the period ending July 1, 1972, \$1.90 per hour;
7. Effective July 2, 1972, \$2.05 per hour;
8. Effective July 2, 1974, \$2.25 per hour;
9. Effective January 1, 1981, \$3.35 per hour
10. Effective January 1, 1989, \$3.75 per hour;
11. Effective April 1, 1990, \$3.80 per hour
12. Effective April 1, 1991, \$4.25 per hour.
13. Effective July 1, 1996, \$4.75 per hour.
14. Effective October 1, 1997, \$5.15 per hour.

(Added by P.L. 5-143, as GC Section 45004, effective 11/9/60, renumbered to 46004 by P.L. 8-11, effective 3/5/65; amended by P.L. 8-162, effective 7/29/66, and P.L. 159, effective 6/1/68, and P.L. 10-38, effective 3/14/69, and P.L. 10-172, effective 8/6/70, and P.L. 12-152, effective 7/2/74; amended by Federal Minimum Wage effective 1/1/81; repealed and reenacted by P.L. 19-31, effective 1/1/89; amended by Federal Minimum Wage effective 4/1/90; amended by Federal Minimum Wage effective 4/1/91; 1994 codification as §3105; amended by Federal Minimum Wage 7/1/96, amended by Federal Minimum Wage effective 7/1/97)

§3106. ALIEN OR H-2 WORKERS MINIMUM WAGE. Every employer employing an alien or aliens who have not been lawfully admitted to the United States for permanent residence by the United States Department of Justice shall pay all United States citizens and permanent residents and citizens of the Federated States of Micronesia, the Republic of Belau, the Republic of the Marshall Islands, or the Commonwealth of the Northern Mariana Islands, doing the same or substantially similar work wages in an amount equal to or greater than the wages paid to the non-resident alien(s) doing the same or substantially similar work. This subsection shall not apply to any construction projects which are in progress on the effective date of this Act or for which construction contracts have been signed prior to the date this Act becomes law.

(Added by P.L. 19-31, as GC Section 46004.1, dated 10/26/88; 1994 codification as §3106).

§3107. MAXIMUM HOURS. SPLIT SHIFTS. (a) no employer shall employ any employee in excess of forty (40) hours a week, unless such employee receives compensation for employment in excess of such weekly hours, at a rate not less than one and one-half (1-1/2) times the regular rate at which he is employed; (b) no employer shall employ any employee in split shifts unless all of the shifts within a period of twenty-four (24) hours fall within a period of fourteen (14) consecutive hours, except in case of extraordinary emergency; (c) no employer shall employ any employee for a work period of more than five (5) hours without a meal period of less than thirty (30) minutes; except that when a work period of not more than six (6) hours will complete the day's work, the meal period may be waived by mutual consent of employer and

employee. Meal period shall not be considered “on duty” or counted as time worked, unless the nature of his work prevents an employee from being relieved of duty.

(Added by P.L. 5-143, as GC Section 45005, effective 11/9/60; renumbered to 46005 & amended by P.L. 8-11, effective 3/5/65; amended by P.L. 11-83, effective 7/30/71; amended by P.L. 12-86, effective 1/16/74; 1994 codification as §3107.)

§3108. EXEMPTIONS. The provisions of §3105 and 3107 shall not apply with respect to: (a) any employee employed by his son, daughter, spouse, or parent; (b) any employee employed in a bona fide executive, administrative or professional capacity, or in the capacity of outside salesman, or as an outside collector; (c) any employee employed in the propagating, catching, taking, harvesting, cultivating or farming of any kind of fish, shellfish, crustacean, sponges, seaweeds, or other aquatic forms of animal or vegetable life, including the going to and returning from work and the loading and unloading of such products prior to first processing; (d) any employee employed as a seaman; (e) any employee employed as a driver of a vehicle carrying passengers for hire operated solely on call from a fixed stand; (f) any employee employed as a golf caddie; (g) any employee employed as a newspaper boy in the delivery of newspapers to the consumer; or (h) any employee to the extent that such employee is exempted by the Commissioner pursuant to §§3113 and 3114.

(Added by P.L. 9-159 as GC Section 46006, effective 6/01/68; Subsection (h) amended by P.L. 17-13; further amended by P.L. 19-31, dated 10/26/88; Subsections (h) and (i) amended by P.L. 21-140, dated 10/2/92; 1994 codification as §3108.)

§3109. DUTY OF WAGE AND HOUR COMMISSIONER; EMPLOYEES, SALARIES. The Commissioner shall enforce the provisions of this Chapter.

(Added by P.L. 5-143, as GC Section 45006, effective 11/9/60 renumbered to 46006 and amended by P.L. 8-11, effective 3/5/65; renumbered to 46007 by P.L. 9-159, effective 6/01/68; amended by P.L. 9-238, effective 7/01/68; 1994 codification as §3109.)

§3110. RECORDS OF EMPLOYEES. Every employer shall keep in or about the premises where any employee is employed, a record of the name, address, social security number or, in the case of alien workers, the passport number and occupation of each such employee, of the amount paid each pay period to each such employee, of the hours worked each day and each workweek by each employee, and of such other information, and for such periods of time as the Commissioner, may be regulation prescribe.

The Commissioner or his authorized representative, shall have direct access to inspect, copy, or subpoena the possession of such records to

conduct all necessary investigation. The Commissioner or his authorized representative, shall have the authority to inspect, copy, and use as evidence all reports, documents, and/or statement of any kind or nature submitted to any department of the government of Guam for the purpose of enforcing the provision of this Chapter. Every employer shall furnish the Commissioner or his authorized representative such information relating to the employment of workers and in such manner that the Commissioner or his representative can use to interview employees during working hours at the place of employment. The Commissioner shall cause this Chapter to be printed and copies of rules and regulations issued by the Commissioner shall be furnished to employers affected thereby without charge.

(Added by P.L.. 5-143, as GC Section 45007, effective 11/9/60; renumbered to 46007 & amended by P.L.. 8-11, effective 3/5/65; renumbered to Section 46008 and amended by P.L.. 9-159, effective 6/01/68; repealed and reenacted by P.L.. 21-140, dated 10/02/92; 1994 codification as §3110.)

§3111. VIOLATIONS: PENALTY. Any employer who intentionally hinders or delays the Commissioner or his authorized representative in the performance of his duties in the enforcement of this Chapter; or who intentionally refuses to admit the Director of Labor or his authorized representative to any place of employment; or who fails to keep any record required under the provisions of §3110 or who refuses to make such records accessible or to give information required for the proper enforcement of this Chapter, upon demand, to the Director of Labor or his authorized representative shall be guilty of a misdemeanor.

(Added by P.L.. 5-143, as GC Section 45008, effective 11/9/60; renumbered to 46008 & amended by P.L.. 8-11, effective 3/5/65; renumbered to Section 46009 by P.L. 9-1, effective 6/01/68; amended by P.L. 13-87; amended by P.L. 21-140, dated 10/2/92; 1994 codification as §3111.)

§3112. INFORMATION NOT TO BE DIVULGED, WHEN. Any information secured from inspection of the records, or from transcriptions thereof, or from inspection of the employer's premises by the Commissioner or his authorized representative may be used in connection with their official duties or within the scope and course of their employment but not otherwise, and shall not be divulged to other than officials concerned with, and solely for the purposes of, the administration of the laws of the territory relating to matters under the jurisdiction of the Commissioner, except in a proceeding in court provided by this Chapter.

(Added by P.L.. 5-143, as GC Section 45009, effective 11/9/60; renumbered to 46009 & amended by P.L.. 8-11, effective 3/5/65; renumbered to Section 46010 by P.L.. 9-159, effective 6/01/68; 1994 codification as §3112.)

§3113. HANDICAPPED WORKERS. The Commissioner may provide by regulations, after a public hearing at which any person may be heard, and subject the approval of the Governor and promulgation by Executive

Order, for the employment in any occupation of individual whose earning capacity is impaired by age or physical or mental deficiency or injury at wages lower than the minimum wage rate provided in §3105 as the Commissioner may find appropriate to prevent curtailment of opportunities for employment, to avoid undue hardship, and to safeguard the minimum wage rate under this Chapter. No employee shall be employed at wages fixed pursuant tot his section except under a special license issued under the applicable regulations, which license shall be issued for such period as the Commissioner shall determine, but not to exceed one year.

(Added by P.L.. 5-143, as GC Section 45010, effective 11/9/60; renumbered to 46010 & amended by P.L.. 8-11, effective 3/5/65; renumbered to Section 46011 by P.L.. 9-159, effective 6/01/68; 1994 codification as §3113.)

§3114. WAGE RATES FOR LEARNERS AND APPRENTICES. For any occupation, the Commissioner may provide by regulations after a public hearing at which any person may be heard, and subject to the approval of the Governor and promulgation by Executive Order, for the employment in such occupation of learners and apprentices at such wages lower than the minimum wage rate provided in §3105 as the Commissioner may find appropriate to prevent curtailment of opportunities for employment and to safeguard the minimum wage rate under this Chapter. No employee shall be employed at wages fixed pursuant to this section except under special license issued under applicable regulations, which license shall be issued for such period as the Commissioner shall determine but not to exceed one year.

(Added by P.L.. 5-143, as GC Section 45011, effective 11/9/60; renumbered to 46011 & amended by P.L.. 8-11, effective 3/5/65; renumbered to Section 46012 by P.L. 9-159, effective 6/01/68; 1994 codification as §3114.)

§3115. OATHS; AFFIDAVITS; SUBPOENAS; WITNESSES; IMMUNITIES. The Commissioner or his authorized representative may administer oaths, take or cause to be taken the depositions of witnesses, and require by subpoenas the attendance and testimony of witnesses and the production of all books, records and other evidence relative to any matter under investigation.

Such subpoenas shall be signed and issued by the Commissioner or his authorized representative. In cases of failure of any person to comply with any subpoenas lawfully issued under this section, or on the refusal of any witness to produce evidence or to testify to any matter regarding which he may be lawfully interrogated, the Judge of the Superior Court of Guam, upon the application of the Commissioner or his authorized representative, shall com obedience by proceeding for contempt, as in the case of disobedience of the requirements of a subpoena issued by such

court or a refusal to testify therein. The Commissioner may certify to official acts.

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commissioner or his authorized representative, or in any cause or proceeding instituted under this Chapter, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(Added by P.L. 5-143, as GC Section 45012, effective 11/9/60; renumbered to 46012 & amended by P.L. 8-11; effective 3/5/65; renumbered to 46013 by P.L. 9-159; effective 6/01/68; 1994 codification as §3115.)

§3116. ADMINISTRATIVE PROCEDURES, GUIDELINES, AND REGULATIONS. The provisions incorporated in the Federal Labor Standards Act, Field Operations Handbook (also known as the “Blue and Red Field Operations Handbook”) in effect on the effective date of this act shall serve as the basic set of procedures, guidelines, and regulations governing the application of Fair Labor Standards in Guam, and are hereby adopted as procedures, guidelines and procedures of the Department of Labor to the extent not inconsistent with Guam law, subject to later amendment or repeal by the Director of Labor. In addition, the Administrator of Wages and Hours may adopt such other rules and regulations that may be necessary to implement this chapter, included, but not limited to, other guidelines in implementing a standard of administration and enforcement not inconsistent with Guam Wage and Hour laws and other labor-related laws. For any occupation, the Director of Labor may make and revise, in accordance with Administrative Adjudication Law, such administrative regulations as he may deem appropriate to carry out the purposes of this Chapter or necessary to prevent the circumvention or evasion thereof and to safeguard the minimum wage rates thereby established.

Such regulate may include, but are not limited to regulations defining and governing outside salesman; learners and apprentices, their number, proportion, and length of service; part-time pay; prevailing wages; disabled workers adverse wages; handicapped workers; bonuses; overtime pay; special pay for special or extra work; permitted deductions

for previously agreed to costs of, or fair value of, board, lodging and other facilities charges to employees or allowances for board, lodging or other facilities customarily furnished by employers to employees; or allowances for such other such special conditions or circumstances which may be usual in a particular employer-employee relationship. Regulations or revisions thereof pursuant to this section shall be made only after fully complying with the Administrative Adjudication Law.

(Added by P.L. 5-143, as GC Section 45013, effective 11/9/60; renumbered to 46013 & amended by P.L. 8-11, effective 3/5/65; renumbered to 46014 & amended by P.L. 9-159, effective 6/01/68; repealed & reenacted by P.L. 21-140, dated 10/2/92; 1994 codification as §3116.)

§3117. PENALTIES; COLLECTION OF UNPAID WAGES; INJUNCTIONS, ETC.,

- (1) Criminal:** Any employer who intentionally violates any provision of this Chapter other than §3211, or of any rule, regulation or order issued under the authority of this Chapter, or who discharges or in any other manner discriminates against such employee because such employee has made a complaint to his employer, to the Department of Labor or to any other person, or has instituted or caused to be instituted any proceeding under or related to this Chapter, or has testified or is about to testify in any such proceedings, shall be guilty of a misdemeanor. Each day a violation continues shall constitute a separate offense. Failure of an employer to pay an employee any wages shall constitute prima facie evidence of a violation of this Chapter.
- (2) Liability to employee:** Any employer who violates any provision of §§3105 and 3107 shall be liable to the employee or employees affected in the amount of their unpaid minimum wages or unpaid overtime compensation, as the case may be, and in case of willful violation an additional equal amount as liquidated damages.
- (3) Collection suits; attorney's fees; assignments; relief from costs:** Action to recover such liability may be maintained in the Superior Court of Guam by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, in the event the plaintiff or plaintiffs prevail, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

At the request of any person paid less than the amount to which he is entitled under the provisions of this Chapter, the Commissioner may take an assignment in trust for the assigning employee of the full amount to which he is entitled under this subsection and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court in the event the Commissioner prevails. The Commissioner shall not be required to pay the filing fee, or other costs, in connection with such action. The Commissioner, in case of suit, may join various claimants against the same employer in one action.

- (4) **Injunctions:** Whenever it appears to the Commissioner that any employer is engaged in any act or practice which constitutes or will constitute a violation of any provision of this Chapter, or of any provision of any regulation, he may in his discretion bring an action in the Superior Court of Guam in which it is charged the act or practice complained of occurred to enjoin such act or practice and to enforce compliance with this Chapter or with such regulation, and upon a proper showing, a permanent or temporary injunction or decree or restraining order shall be granted without bond.

(Added by P.L. 5-143, as GC Section 45014, effective 11/9/60; renumbered to 46014 & amended by P.L. 8-11, effective 3/5/65; renumbered to 46015 by P.L. 9-159, effective 6/01/68; Subsection ((1) amended by P.L. 13-187; further amended by P.L. 21-140, dated 10/2/92, 1994 codification as §3117.) NOTE: "District Court" changed to "Superior Court" to reflect change made to court structure and jurisdiction by the "Court Reorganization Act of 1974" (P.L. 12-85).

§3118. RIGHT OF COLLECTIVE BARGAINING PROTECTED. Nothing in this Chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively through representatives of their own choosing in order to establish wages in excess of the applicable minimum under this Chapter, or to establish hours of work shorter than the applicable maximum under this Chapter.

(Added by P.L. 5-143, as GC Section 45015, effective 11/9/60; renumbered to 46015 & amended by P.L. 8-11, effective 3/5/65; renumber to 46016 by P.L. 9-159, effective 6/01/68; 1994 codification as §3118.)

§3119. TERRITORY-FEDERAL COOPERATION. On the administration of this Chapter, the Commissioner and the Director shall cooperate to the fullest extent consistent with the provisions of this Chapter with the

Administrator of Wage and Hour and Public Contracts Division, United States Department of Labor.

(Added by P.L. 5-143, as GC Section 45016, effective 11/9/60; renumbered to 46016 & amended by P.L. 8-11, effective 3/5/65; renumber to 46017 by P.L. 9-159, effective 6/01/68; 1994 codification as §3119.)

§3120. SEPARABILITY OF PROVISIONS. If any provision of this Chapter or the application of such provision to any person or circumstances is held invalid, the remainder of the Chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Added by P.L. 8-11, as GC Section 46017, effective 3/5/65; renumbered to 46018 by P.L. 9-159, effective 6/01/68; 1994 codification as §3120.)

§3121. MINIMUM WAGE; AUTOMATIC INCREASE. Whenever a Federal Law establishes a minimum wage higher than the minimum wage established pursuant to §3105, the minimum wage under this Act shall be correspondingly increased to the minimum wage level of the Federal law with the same effective date.

(Added by P.L. 12-35, as GC Section 46019, effective 7/3/73; 1994 codification as §3121..)

**TITLE 22
CHAPTER 3**

**ARTICLE 2
WAGES, PAYMENT OF**

§3201. WAGES TO BE PAID, WHEN. The earned wages of all employees shall be due and payable within seven (7) days after the end of each pay period, except that: (a) the earned wages of all employees discharged by the employer either with or without cause shall be immediately due and payable upon discharge; (b) if an employee leaves his employment voluntarily, his earned wages shall be due and payable on the next regular pay day; (c) where work is suspended as a result of a labor dispute, the wage of all employees earned to the date of such suspension shall become due and payable at the next regular pay day.

(Added by P.L. 5-143, as GC Section 45030, effective 11/9/60; renumbered to 46030 & amended by P.L. 8-11, effective 3/5/65; 1994 codification as §3201.)

§3202. PAYMENT WHEN AMOUNT DISPUTED. In case of a dispute over wages resulting in, or existing at the time of, termination of employment, the employer shall give notice to the employees and the Director of Labor of the amount of wages which he concedes to be and the same shall be payable without any conditions whatsoever at the time fixed by §3201, and the acceptance by the employees of such payment shall not constitute a release or accord and satisfaction with respect to the disputed amount.

(Added by P.L. 5-143, as GC Section 45031, effective 11/9/60; renumbered to 46031 by P.L. 8-11, effective 3/5/65; amended by P.L. 21-140, dated 10/02/92; 1994 codification as §3202.)

§3203. FINES, DEDUCTIONS FOR. No fines shall be collected, deducted or retained by any person out of any compensation earned by any employee.

(Added by P.L. 5-143, as GC Section 45032, effective 11/9/60; renumbered to 46032 by P.L. 8-11, effective 3/5/65; 1994 codification as §3203.)

§3204. WAGES, DEDUCTIONS FROM. It shall be unlawful for any person to deduct and retain any part or portion of any compensation earned by any employee except where required by federal or territorial statute or by court process or when such deductions are authorized in writing by the employee, provided that deductions for fines may not be so authorized.

(Added by P.L. 5-143, as GC Section 45033, effective 11/9/60; renumbered to 46033 by P.L. 8-11, effective 3/5/65; 1994 codification as §3204.)

§3205. CRIMINAL PENALTY. Any person who, having the ability to pay, intentionally refuses to pay wages due and payable when demanded or who violates any provision of §§3201 through 3204 of this Title shall be guilty of a misdemeanor.

(Added by P.L. 5-143, as GC Section 45034, effective 11/9/60; renumbered to 46034 & amended by P.L. 8-11, effective 3/5/65; amended by P.L. 11-30, dated 4/23/71; amended by P.L. 13-187; amended by P.L. 21-140, dated 10/2/92; 1994 codification as §3205.)

§3206. INJUNCTION FOR FAILURE TO PAY WAGES. If any judgment obtained by the Commissioner against an employer for nonpayment of wages remains unsatisfied for a period of thirty (30) days after the time to appear therefrom has expired and no appeal is pending or after such judgment has been finally affirmed on appeal, the Commissioner may institute proceedings in the name of the territory in the District Court in which such employer has his principal place of business to compel such employer to cease doing any business until such judgment has been satisfied.

(Added by P.L. 5-143, as GC Section 45035, effective 11/9/60; renumbered to 46035 by P.L. 8-11, effective 3/5/65; 1994 codification as §3206.)

§3207. CLAIMS FOR WAGES PREFERRED. When the business of any person, corporation, company or firm is suspended as a result of a writ of execution or attachment or is placed in the hands of a receiver, trustee or assignee for creditors, then in all such cases claims for wages for each claimant an amount per claimant not to exceed one thousand forty (1040) hours multiplied by the minimum wage in effect on the last day labor was performed by the employee and earned within six (6) months of the date such business is suspended or placed in the hands of a receiver, trustee or assignee for creditors shall be paid in full prior to the payment of taxes or any other debts except a debt secured by a mortgage or security interest duly recorded before the wages were earned.

(Added by P.L. 5-143, as GC Section 450356, effective 11/9/60; renumbered to 46036 by P.L. 8-11, effective 3/5/65; repealed and reenacted by P.L. 21-140, dated 10/02/92; 1994 codification as §3207.)

§3208. FILING OF CLAIMS: CONTESTS. Any employee desiring to enforce his claim for wages under §§3207 to 3209 shall present a statement under oath showing the amount due, the kind of work for which such wages are due, and when such work was performed to the officer or person charged with such property within twenty (20) days after the seizure thereof on any execution or writ of attachment or within sixty (60) days after such property has been placed in the hands of a

receiver, trustee or assignee for creditors. Any interested party may contest any such claim or part thereof by filing sworn exceptions thereto with such officer or person within ten (10) days after the period for filing claims, and thereupon the claimant shall be required to reduce his claim judgment before any part thereof shall be paid.

(Added by P.L. 5-143, as GC Section 45037, effective 11/9/60; renumbered to 46037 by P.L. 8-11, effective 3/5/65; 1994 codification as §3208.)

§3209. WHEN CLAIMS PAID; PRORATING. No claim shall be paid until after the expiration of the time for filing and contesting claims. If the funds realized from the sale of the property are insufficient to pay the total claims for wages presented, then such funds shall be prorated on such claims.

(Added by P.L. 5-143, as GC Section 45038, effective 11/9/60; renumbered to 46038 by P.L. 8-11, effective 3/5/65; 1994 codification as §3209.)

§3210. SEPARABILITY OF PROVISIONS. If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

(added by P.L. 5-143, as GC Section 45039, effective 11/9/60; renumbered to 46039 by P.L. 8-11, effective 3/5/65; 1994 codification as §3210.)

§3211. ADDITIONAL CRIMINAL PENALTIES: (a) It shall be a felony of the second degree to knowingly and materially alter payroll records to deprive an employee of wages rightfully due; (b) It shall be a felony of the second degree to knowingly and materially falsify payroll records to deprive an employee of wages rightfully due.

(Added by P.L. 21-140, as GC Section 46040, dated 10/02/92; 1994 codification as §3211.)

§3212. DEDUCTIONS AND FORM OF PAYMENTS. (a) All deductions taken from an employee's pay by an employer, and all sums payable or paid to the employer from said pay to the employee, shall be shown on the employee's pay statement or check stub, and a copy thereof shall be given to the employee at the time the employee is paid. A copy thereof shall be kept by the employer for three (3) years; (b) All payments made to an employee by an employer shall be in the form of cash or check. It is then the employee's responsibility to cash his or her check. No employer of non-immigrant alien employees may deduct from their pay any funds for transmittal off-island for any purpose whatever.

(Added by P.L. 21-140, as GC Section 46t041, dated 10/02/92; 1994 codification as §3212.)

§3213. STATEMENT IF WAGES NOT PAID. If an employer cannot or does not pay wages rightfully due when due to one (1) or more

employees, the employer shall, within five (5) days, exclusive of Saturdays, Sundays, and holidays: (a) Give each employee and the Director of Labor a statement showing the correct hours worked for the pay period in question, the correct wages earned, the correct legal deductions from pay, and correct wages payable. A statement containing errors shall be considered correct if the employer can establish that the error was an honest error made accidentally and in good faith; and, if after ten (10) working days, the wages have still not been paid, then the employer shall: (b) Deliver to the Department of Labor a list of receivables due the employer, a list of all the employer's bank accounts along with copies of the latest bank statements, the name of all officers, directors, and managers of the employer if a corporation, and the names, addresses, and telephone numbers of any person owning more than ten percent (10%) of the employer, along with copies of all time cards and payment records for all employees for the pay periods missed.

(Added by P.L. 21-140, as GC Section 46042, dated 10/02/92; 1994 codification as §3213.)

§3214. LIENS FOR UNPAID WAGES. When the Director of Labor finds that an employer has not paid wages due, then, in addition to all other remedies, relief, and liens allowed by law or at equity; (a) The Director of Labor (the "Director") through the Attorney General's Office may promptly file a labor lien on any real property owned by the employer, to be filed at the Department of Land Management, and have served upon the holders of any mortgage thereon a copy of the lien; and (b) The Director through the Attorney General's Office may promptly file a labor lien on any personal property (including accounts receivable) owned by the employer to be filed at the Department of Revenue and Taxation; and (c) The Director through the Attorney General's Office may order the bank accounts of the employer frozen; and (d) Liens and bank accounts frozen by this section shall be released upon posting with the Director a cash bond or a surety bond issued by an insurance company licensed in Guam in an amount equal to wages allegedly owed plus fines, penalties, costs, and attorney's fees; and (e) None of the actions of the Director set out in paragraphs (a) through (d) above may be taken without approval of the Superior Court set out in an order, which only may be entered without notice when the Director has satisfied the court that funds will be dissipated if notice be given.

(Added by P.L. 21-140, as GC Section 46042.1, dated 10/02/92; 1994 codification as §3214.)

§3215. DEFINITIONS.

- (a) **Wages.** For purposes of this Title, "wages" (however denominated) means the gross amount owed to the employee, and includes but is not limited to all

compensation for labor for which an employee is entitled including regular pay, overtime pay, commissions, wages as defined in Subsection (6) of §3104 of this Code, wages to which the employee may be entitled based on the Prevailing Wage Rates established pursuant to Section 101(a)(15)(H) ii of 8 U.S.C. 1186 (federal immigration law) established by the Governor of Guam or the United States Government, wages based on contract, and all other amount to which the employee is entitled for labor performed on behalf of an employer.

Retirement contributions of both the employer and the employee to a retirement fund or plan, including the Government of Guam Retirement Fund, shall be the property of the retirement fund or plan held in trust for the benefit of the members of the plan or fund, and the employer retains no rights thereto. Actions for non-payment of such contributions or misuse of such funds or plans may be enforced, prohibited and recovered by the Attorney General, the employee, or any member in the same manner as an action for unpaid wages, with the same penalties and attorney's fees.

Except for government employees and employees of non-profit organizations enjoying tax-free status, employees cannot do volunteer work at lower than regular pay or without overtime if applicable which work will directly or indirectly benefit his or her employer. This rule does not apply to employers who operate institutions engaged in the care of sick, aged, or mentally ill or defective persons. This exemption permits these institutions to adopt a fourteen - (14-) day workweek instead of a seven - (7-) day workweek and does not require overtime unless an employee is employed more than eight (8) hours per day or in excess of eighty hours in the fourteen-(14-) day workweek.

- (b) **Local worker.** For purposes of this Title, "local worker" or "local employee" means a U.S. citizen, a permanent resident of the United States, a U.S. national, or a person from the Commonwealth of the Northern Mariana Islands, the Republic of Belau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

(Added by P.L. 21-140, as GC Section 46042.2, dated 10/02/92; 1994 codification as §3215.)

§3216. ENFORCEMENT OF PREVAILING WAGES. The Department of Labor is authorized to conduct, administer, apply, and enforce prevailing wages required to be paid to non-immigrant alien workers under the provisions of Section 101(a)(15)(H) ii of 8 U.S.C. 1186 rates for the territory of Guam once they have been established by the Governor of Guam.

(Added by P.L. 21-140, as GC Section 46042.3, dated 10/02/92; 1994 codification §3216.)

§3217. DEFINITION OF FAILURE TO PAY WAGES. For purposes of this Title, “failure to pay wages” or “unpaid wages” (however denominated) includes but is not limited to:

- (a) Failure to pay sums due for wages, overtime, and benefits; or
- (b) Failure to pay sums deducted from pay for payment to another within five (5) days of the day an employee’s pay is due. As to child support payments deducted from an employee’s pay but not paid in a timely manner by an employer properly served with a court order of wage assignment issued by a Guam court, or authorized by the employee to deduct such payments, any penalties shall accrue to the benefit of the spouse receiving the support, who shall have the authority to enforce such non-payment against the employer; or
- (c) Underpayment of wages; or
- (d) Understating hours worked; or
- (e) Improper deduction of sums for wages; or
- (f) Payment with a check which is dishonored; or
- (g) Taking illegal kickbacks from employees by an employer or employer’s agent; or
- (h) Any scheme whereby an employer deprives an employee of the employee’s rightful wages.

“Wages” includes sums payable for work done pursuant to a contract to perform personal services or to perform as an artist or performer. It is against public policy to allow avoidance of wage law enforcement, minimum wage laws, overtime laws, child labor laws, etc., by including employees to sign employment contracts.

(Added by P.L. 21-140, as GC Section 46043, dated 10/02/92; 1994 codification as §3217.)

§3218. FEES AND COSTS. Any employer who fails to pay one (1) or more employee wages when due or who violates any provision of this Title or who fails to pay overtime or who violates the child labor laws of the territory shall pay all attorney's fees and costs necessary to collect such amounts. The Department of Labor shall be entitled to a collection fee to be paid by the employer in the amount of twelve percent (12%) of wages due and collected by the Department of Labor or the government of Guam on behalf of an employee to offset the costs to the people of Guam to enforce the provisions of this Title.

(Added by P.L. 21-140, as GC Section 46043, dated 10/02/92; 1994 codification as §3218.)

§3219. PENALTIES.

- (a) Except for government entities, any employer who fails to pay one (1) or more employees wages when due or who underpays an employee shall p punitive damages to the employee of three (3) times the wages due, unless the employer can establish, as an affirmative defense in equity, by a preponderance of the evidence, that:
- (1) In the case of non-payment, the employer did not have the ability to pay the wages due; and
 - (2) The employer complied with all other provisions of this Chapter; and
 - (3) There was no fraud committed against any employee by the employer in the computation of wages; and
 - (4) The employer was in substantial compliance with all territorial and federal laws as to wage and hour matters relating to employees, and that any non-compliance was in good faith; and
 - (5) In the case of non-payment, managers or officers of the employer were not given priority in the disbursement of wages or allowances; and
 - (6) In the case of non-payment, the employer complied with the requirements of §3213 this Code; and

- (7) The employer comes before the court with clean hands; and
 - (8) In the case of an underpayment, the underpayment was a good faith error with no intent to defraud.
- (b) Any person participating in any fraud or intentional non-payment or underpayment of wages against any employee or any person knowingly benefiting from any fraud or intentional non-payment or underpayment of wages shall be jointly and severally liable with the employer and others liable for all unpaid wages, penalties, attorney's fees and costs due to any unpaid employee of the employer.

(Added by P.L. 21-140, as GC Section 46045, dated 10/02/92; 1994 codification as §3219.)

§3220. WAIVERS. An employee may not waive his right to or compromise wages earned. An employee may waive or compromise penalties, costs and attorney's fees arising from violations of this Chapter only if all wages are paid in full and only if the employee is represented by an attorney and the waiver or compromise is approved in writing by the employee and his attorney.

(Added by P.L. 21-140, as GC Section 46046, dated 10/02/92; 1994 codification as §3220.)

§3221. REPRESENTATION BY ATTORNEY GENERAL OR A PRIVATE ATTORNEY. The Attorney General or a private attorney may represent employees and/or the Director of Labor in actions for unpaid wages or for violations of this Title. In such violations, the court shall award reasonable attorney's fees of not less than One Hundred Twenty-Five Dollars (\$125) per hour to the government of Guam or the private attorney to be paid by the employer.

(Added by P.L. 21-140, as GC Section 46047, dated 10/02/92; 1994 codification as §3221.)

§3222. CLASS ACTIONS. The courts shall liberally permit class actions suits against an employer based upon violations of this Chapter.

(Added by P.L. 21-140, as GC Section 46087, dated 10/02/92; 1994 codification as §3222.)

§3223. CHANGES IN EMPLOYMENT CONTRACTS: DISCRIMINATION. If an employment contract for a non-immigrant alien worker to work in Guam has been previously submitted to the Guam Department of Labor, the U.S. Department of Labor, the U.S. Immigration and Naturalization Service, or the U.S. State Department as part of a process to obtain a visa or permission to work in the United States, then any prior or subsequent

replacement, modification or amendment thereto is enforceable by the employer and may benefit the employer only if it is legal and not contrary to public policy and only if it is submitted to the Department of Labor, and is approved in writing by the Department of Labor. Such submission and approval are not required if the only modification is to increase the wages of the employee. It shall be a felony of the second degree for an employer to knowingly employ, compensate, or provide preference to non-immigrant workers over local workers, or to discriminate against local workers in the employment or compensation of non-immigrant workers.

(Added by P.L. 21-140, as GC Section 46089 dated 10/02/92; 1994 codification as §3223)

**GOVERNMENT OF GUAM
Office of the Governor
Agana, Guam**

EXECUTIVE ORDER NO. 61-14

**REGULATIONS GOVERNING THE MINIMUM WAGE
AND HOUR ACT OF GUAM**

WHEREAS, Section 45013, Government Code of Guam authorizes the Minimum Wage Commissioner to make such regulations as are required or appropriate to carry out the provisions of Title XLII, Government Code of Guam, "The Minimum Wage and Hour Act of Guam, subject to the approval of the Governor; and

WHEREAS, The Commissioner, following public hearing held April 21, 1961, has prescribed Rules I through VIII providing for the administration and enforcement of the Act.

NOW, THEREFORE, pursuant to the foregoing, the attached rules, as prescribed by the Minimum Wage Commissioner, are hereby approved and promulgated, and shall be in effect as of the date of this Order.

Dated at Agana, Guam, this 17th day of May, 1961.

**/s/ JOSEPH FLORES
Governor of Guam**

COUNTERSIGNED:

/SEAL/

**/s/ HAROLD W. BURNETT
Assistant Secretary**

**REGULATIONS OF THE
WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR
Government of Guam
Agana, Guam**

Under and by virtue of the authority conferred upon the Minimum Wage Commissioner by Title XLII, Government Code of Guam, and every other power thereunto enabling, the Commissioner does hereby prescribe, subject to approval by the Governor and promulgation by Executive Order, the following regulations, having the force and effect of law, relating to the administration and enforcement of the Minimum Wage and Hour Act of Guam, Title XLII, Government Code of Guam.

RULE I. DEFINITIONS

For the purposes of the Minimum Wage and Hour Act of Guam:

- (A) The term “individual employed...in a bona fide executive, administrative or supervisory capacity” shall mean any individual—
- (1) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and
 - (2) who customarily and regularly directs the work of two or more other employees therein; and
 - (3) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
 - (4) who customarily and regularly exercises discretionary powers; and
 - (5) who does not devote more than 20 percent of his hours worked in the workweek to activities which are not directly and closely related to the performance of

the work described in paragraphs (1) through (4) of this section; provided, however, that this paragraph (5) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least 20 percent interest in the enterprise in which he is employed; and

- (6) who is compensated for his services on a salary basis at a rate of not less than \$500 per month, inclusive of the reasonable cost to the employer of board, lodging or other facilities.

(B) The term “individual employed...in a bona fide...professional capacity” shall mean any individual—

- (1) whose primary duty consists of the performance of work—

- (a) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study (as distinguished from a general academic education, and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes), or
- (b) original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee.

(C) The term “individual employed...in the capacity of outside salesman” shall mean any individual—

- (1) who is employed for the purpose of and who is customarily and regularly engaged away from his employer’s place or places of business in—
 - (a) making sales, which shall mean the transfer of title to both tangible and intangible proper; or

- (b) obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
 - (2) whose hours of work of a nature other than that described on paragraphs (1)(a) or (1)(b) of this subsection do not exceed 20 percent of the hours worked in the workweek by non-exempt employees of the employer. Exempt work shall include work performance incidental to and in conjunction with the employee's own outside sales or solicitations.
- (D) The term "individual employed...as an outside collector" shall mean any individual—
- (1) who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in—
 - (a) collecting money for goods or services previously or presently furnished by his employer, or
 - (b) collecting money for an account placed in the hands of his employer for collection, and
 - (2) whose hours of work of a nature other than that described in paragraphs (1)(a) or (1)(b) of this section do not exceed 20 percent of the hours worked in the workweek by non-exempt employees of the employer. Exempt work shall include work performed incidental to and in conjunction with the employee's own outside collections.
- (E) The term "retail store" shall mean any store in which goods or commodities in small quantities or parcels are sold at retail or directly the consumer.
- (F) The term "grocery store" shall mean any store in which tea, sugar, spices, coffee, fruits, and various other commodities, chiefly food stuffs, are sold.

- (G) The term “gasoline station” shall mean a retail station for gasoline and oil.
- (H) The term “restaurant” shall mean any establishment where refreshments or meals may be produced by the public.
- (I) The terms “laundry establishment” and “dry-cleaning establishment” shall mean any establishment or place used in the business of marking, sorting, washing, drying, starching, ironing or cleaning wearing apparel, household linens and other articles with solvents, including any establishment providing laundering equipment for use by customers for a fee known by various terms such as laundromat, wash-o-mat, or launderette.
- (J) The term “bakery” shall mean a place where bakery products are made or sold at retail.
- (K) The terms “barber shop” and “beauty parlor” shall mean any establishment or place wherein any of the following is practiced for compensation:
- (1) Shaving, clipping, trimming, or cutting the human hair.
 - (2) Singing, shampooing, arranging, adorning, dressing, curling, waving, permanent waving, tinting or dyeing the human hair or apply hair tonics.
 - (3) Giving facial, scalp, neck, or body massages or treatment with oils, creams, lotions, or other preparations either by hand or mechanical appliances.
 - (4) Applying cosmetic preparations, antiseptics, powders, oils, clays, lotions, or other preparations to scalp, face, neck or hands.
 - (5) Manicuring or pedicuring.
- (L) “Sheltered workshop” or “workshop” means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, and of providing such individuals with remunerative

employment or other occupational rehabilitating activity of an educational or therapeutic nature.

- (M) **“Handicapped client” or “client” means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury, and who is being served in accordance with the recognized rehabilitation program of a sheltered workshop within the facilities of such agency or in or about the home of a client.**
- (N) **A “learner” or “student learner” is a student who is receiving instruction in an accredited school, college, or university and who is employed on a part-time basis, pursuant to a bona fide vocational program.**
- (O) **“Apprentice” means a worker who is employed to learn a skilled trade as defined in Rule I, Section (R), and in conformity with or substantial conformity with the standards of apprenticeship as set forth in Rule I, Section (Q).**
- (P) **A “bona fide vocational training program” is one authorized and approved by the Territorial Diversified Occupations Advisory Council or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related industrial information given as a regular part of the student-learner’s course by an accredited school, college or university.**
- (Q) **An apprenticeship program must conform with or substantially conform with the following standards of apprenticeship before the Commissioner or his authorized representative will issue a special certificate authorizing employment of an apprentice under such program at wages lower than the minimum wage applicable under Section 46004 of the Act.**
 - (1) **Employment and training of the apprentice in a skilled trade. A skilled trade is an apprenticeable occupation which satisfies the criteria set forth in Rule I, Section (R).**
 - (2) **Two or more years (4,000 or more hours) or work experience.**

- (3) A progressively increasing schedule of wages to be paid the apprentice which averages at least 50 percent of the journeyman's rate over the period of apprenticeship.
 - (4) A schedule of work processes or operation in which experience is to be given the apprentice on the job.
 - (5) Adequate facilities for training and supervision of the apprentices and the keeping of appropriate records concerning his progress.
 - (6) Related instruction, if available. (144 hours a year is considered necessary.) Related instruction means an organized and systematic form of instruction which is designed to provide the apprentice with knowledge of the theoretical and technical subjects related to his trade. Such instruction may be given in a classroom, through correspondence courses, or other forms of self-study.
- (R) A skilled trade is an apprenticeable occupation which possesses all of the following characteristics:
 - (1) Is customarily learned in a practical way through training and work experience on the job.
 - (2) Is clearly identified and commonly recognized throughout an industry.
 - (3) Requires two or more years (4,000 or more hours) of work experience to learn.
 - (4) Requires related instruction to supplement the work experience (which instruction may be provided in accordance with Rule I, Section (Q), Subsection (6)).
 - (5) Is not merely a part of an apprenticeable occupation.
 - (6) Involves the development of skill sufficiently broad to be applicable in like occupations throughout an industry, rather than of restricted application to the products of any one company.
 - (7) Does not fall into any of the following categories:

- (a) Selling, retailing, or similar occupations in the distributive field.
- (b) Managerial occupations.
- (c) Clerical occupations.
- (d) Professional and semi-professional occupations (this category covers occupations for which entrance requirements customarily include education of college level).

RULE II. EMPLOYEES EMPLOYED IN ACTIVITIES INCIDENTAL, MINOR, OR SUBSIDIARY TO THE PRINCIPAL ACTIVITY.

- (A) The provisions of Sections 46004 and 46005, Government Code of Guam, shall not apply to employees employed in activities, incidental, minor, or subsidiary to the principal exempt activity; provided, that such employees devote not more than 25 percent of their hours worked in the workweek to non-exempt work; and provided further, that the total weekly dollar volume of sales of goods or services by such employees is not more than 25 percent of the total weekly dollar volume of sales of goods or services of the principal activity.

RULE III. HANDICAPPED CLIENTS IN SHELTERED WORKSHOPS, LEARNERS AND APPRENTICES.

- (A) The provisions of Section 46004 and 46005, Government Code of Guam, shall not apply to handicapped clients in sheltered workshops, learners or apprentices; provided, application for a special license, on forms to be provided by the Minimum Wage Commissioner is made by the employer of such handicapped clients, learners or apprentices for wages lower than the minimum wage rate provided by Section 46004.

RULE IV. EMPLOYER'S RECORDS.

- (A) Every employer shall maintain and keep records in English containing the following information and data on each employee to whom Sections 46004 and 46005, Government Code of Guam, apply:

- (1) Name in full, and also an identifying symbol or number if such is used in place of or in addition to a name on any record kept by the employer relating to such employee.
 - (2) Home Address.
 - (3) Date of Birth.
 - (4) Occupation.
 - (5) Rate of pay and length of pay period.
 - (6) Hours worked each workday and total hours worked each workweek.
 - (7) Total daily or weekly straight-time earnings or wages.
 - (8) Total weekly overtime compensation.
 - (9) Total additions to or deductions from wages paid each pay period.
 - (10) Total wages paid each pay period, date of payment, and pay period covered.
- (B) Such records shall be preserved by the employer for a period of at least six years.

RULE V. REASONABLE COST OF BOARD, LODGING OR OTHER FACILITIES.

- (A) The reasonable cost to the employer of furnishing an employee with board, lodging or other facilities is hereby determined to be the actual cost of operation and maintenance, including adequate depreciation, plus an allowance not exceeding 5 ½ percent for interest on the depreciated amount of capital invested by the employer. Reasonable cost shall not include a profit to the employer or to any affiliated person.
- (B) The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at by good and proper

accounting practices in the Territory of Guam. The term "good and proper accounting practices in the Territory of Guam" shall not include accounting practices which have been rejected by the Income Tax Division of the Department of Revenue and Taxation, or by the Bureau of Internal Revenue, U.S. Department of Treasury, for income tax purposes. The term "depreciation" shall include obsolescence.

(C) For the purposes of the Minimum Wage and Hour Act of Guam, the cost of furnishing facilities which are primarily for the benefit or convenience of the employer are not to be included as wages. The following list of such facilities is illustrative rather than exclusive:

- (1) Tools of the trade and other materials and services incidental to carrying on the employer's business.
- (2) Uniforms and their laundering, where the nature of the business requires the employee to wear a uniform.
- (3) Company transportation from company to work site and return.

RULE VI. REDUCTION OF WAGES.

No employer shall reduce a wage paid by him which is in excess of the minimum wage under the Minimum Wage and Hour Act of Guam for the purpose of evading the overtime provisions of section 46005, Government Code of Guam.

RULE VII. PAYMENT OF WAGES.

- (A) Except as provided for by Section 46030, Government Code of Guam, the earned wages of all employees shall be due and payable within seven days after the end of each pay period.
- (B) In the case of a dispute over wages resulting in, or existing at the time of termination of employment, the employer shall give notice to the employees of the amount of wages which he concedes to be due and the same shall be payable without any conditions whatsoever at the time fixed by Section 46030, Government Code of Guam, and the acceptance by the employees of such payment shall not constitute a release

or accord and satisfaction with respect to the disputed amount.

- (C) No person shall deduct or retain any part or portion of any compensation earned by any employee except where required by federal or territorial statute or by court process or when such deductions are authorized in writing by the employee.

RULE VIII. DISPLAY OF POSTERS.

Every employer shall display posters containing provisions of the Minimum Wage and Hour Act of Guam in conspicuous places on his premises as furnished by the Commissioner.

RULE IX. EFFECTIVE DATE.

These rules shall take effect upon promulgation by Executive Order.

Dated at Agana, Guam this 17th day of May, 1961.

GOVERNMENT OF GUAM
Office of the Governor
Agana, Guam

EXECUTIVE ORDER NO. 84-15

**DEPARTMENT OF LABOR, WAGE AND HOUR
COMMISSIONER'S RULES AND REGULATIONS
GOVERNING SUBMINIMUM WAGE FOR HANDICAPPED
WORKERS/CLIENTS/TRAINEES**

WHEREAS, Section 46011 of Title XLII, Chapter I, Minimum Wage and Hour Act, Government Code of Guam, authorizes the Wage and Hour Commissioner to provide by regulations for the employment in any occupation of individual whose earning capacity is impaired by age or physical or mental deficiency or injury at wages lower than the minimum wage rate provided in Section 46004 of the Act, as the Commissioner may find appropriate in order to prevent curtailment of opportunities for employment, to avoid undue hardship and to safeguard the minimum wage rate under the Act; and

WHEREAS, The Wage and Hour Commissioner, following public hearings held on July 14, 1982 and February 15, 1984, pursuant to Section 46011 of Title XLII and Chapter III, Title XXV (PL 13-40), of the Government Code of Guam, has prescribed and attached Rules 1 through XXIV providing for the administration and enforcement of Section 46011 of the Act.

NOW, THEREFORE, I, RICARDO J. BORDALLO, Governor of Guam hereby order the following:

1. The attached Subminimum Wage for Handicapped Workers/Clients/Trainees Rules and Regulations, as prescribed by the Wage and Hour Commissioner, are approved and promulgated, and shall be effective upon filing with the Legislative Secretary.

Dated at Agana, Guam this 11th day of May, 1984.

/s/RICARDO J. BORDALLO
Governor of Guam

COUNTERSIGNED:

/s/ EDWARD S. REYES
Lieutenant Governor of Guam

**WAGE A HOUR DIVISION
DEPARTMENT OF LABOR
GOVERNMENT OF GUAM**

PART I

RULES AND REGULATIONS

**SUBMINIMUM WAGE FOR HANDICAPPED
WORKERS/CLIENTS/TRAINEES**

AUTHORITY: By virtue of the authority vested in him by Section 46011, Chapter I, Title XLII, Fair Labor Standards, Government Code of Guam, the Wage and Hour Commissioner hereby issues these rules and regulations, which he/she finds necessary in order to carry out his/her responsibilities in the administration and enforcement of the provisions of the law as related to the employment of Handicapped Workers at subminimum wage rate. These rules and regulations, subject to approval by the Governor and promulgation by Executive Order, shall be liberally construed to accomplish the purposes of the law and the policies of the Commissioner and shall be in force and effect until such time that it is amended by rules and regulations hereafter made and published by the Commissioner.

PURPOSE: The intended purpose and objectives of the law and these rules and regulations are to promote and encourage the employment in any occupation of individual whose earning capacity is impaired by age or physical or mental deficiency or injury at wages lower than the established minimum wage rate provided for in the Minimum Wage and Hour Act as the Commissioner may find appropriate to avoid undue hardship and to prevent curtailment of opportunities for employment of said individuals.

GENERAL: License for the employment of handicapped workers in competitive employment are not issued for less than 75 per centum of the statutory minimum wage rate, unless a lower rate is clearly justified

by DVR, in which case the lowest rate may be authorized is 50 per centum of that minimum.

Employment of individuals whose work is incidental to DVR certified training or evaluation programs or whose productive capacity is inconsequential which may, when appropriate, be less than 50 per centum of the statutory minimum wage apply only when such individuals are employed in sheltered workshops authorized under Part III of these rules and regulations.

For the multi-handicapped individuals whose earning capacity is severely impaired, a wage lower than 50 per centum of the statutory minimum wage rate, but not less than 25 per centum of that minimum may be authorized, under appropriate circumstances severely impaired earning capacity are employed in shelter workshops.

RULE I

DEFINITIONS

1. "Commissioner," "Employ," "Employer," "Employee," "Wage," "Week," mean the same as the terms are defined in Section 46003, Chapter I, Title XLII, Fair Labor Standards, Government Code of Guam.
2. "Act" shall mean the Minimum Wage and Hour Act of the Fair Labor Standards, Government Code of Guam.
3. "Handicapped Worker" or "Worker" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury for the work he/she is to perform.
4. "Handicapped client" or "client" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury, and who is being served in accordance with the recognized rehabilitation program of a sheltered workshop within the facilities of such agency or in or about the home of a client.
5. "Sheltered Workshop" or "Workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, and of providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

6. **“Handicapped trainee” or “trainee” means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury, and who is receiving or is scheduled to receive on-the-job training in industry under any vocational rehabilitation program administered by an authorized vocational rehabilitation agency operating pursuant to the existing Federal and/or Territorial Vocational Rehabilitation laws, as amended.**
7. **“DVR” means the Department of Vocational Rehabilitation which administers and supervises the administration of vocational rehabilitation services.**
8. **“Department” means the Department of Labor.**
9. **“Director” means the Director of the Department of Labor.**
10. **“Board” means the Board of Control for Vocational Rehabilitation.**
11. **“Competitive employment” means employment of a handicapped worker whose earning or productive capacity would yield wages equal to at least 50 per centum of the minimum wage applicable under Section 46004 of the Act at wage rates which are commensurate with those for non-handicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.**
12. **“Training Program” means a program of not more than 12 months’ duration, except that longer periods may be approved in unusual circumstances, designed to (1) develop the patterns of behavior which will help a client adjust to a work environment, or (2) teach the skills and knowledge related to a specific occupational objective of a job family, and which meets DVR or equivalent standards.**
13. **“Evaluation program” means a program of not more than 6 months’ duration, except that longer periods may be approved in unusual circumstances, using the medium of work to determine a client’s potential, and which meets DVR or equivalent standards.**
14. **“Work activities center” shall mean a workshop, or a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. (Therapeutic activities, as used herein, include custodial activities, such as activities where the focus is on teaching the basic skills**

of living, and any purposeful activity so long as work or production is not the main purpose.)

15. "Vicinity" means the island or Territory of Guam.

PART II

SUBMINIMUM WAGES FOR HANDICAPPED WORKERS IN COMPETITIVE EMPLOYMENT

RULE II

APPLICATION FOR A LICENSE

1. Application for a license for the employment of handicapped workers at subminimum wage shall be made to the Commissioner.
2. The application shall set forth, among other things, the following:
 - a. The nature of the disability. Vague statements such as "nervous condition," "physically incapacitated," "slow worker," etc., are not sufficient.
 - b. A clear description of the occupation at which the worker is to be employed.
 - c. The wage the firm proposes to guarantee the worker per hour.
3. When a wage is requested which is less than 50 per centum of the statutory minimum wage rate, the application shall also contain:
 - a. Evidence that the individual is multi-handicapped or so severely impaired that he/she is unable to engage in competitive employment. For such workers, the rate shall be not less than 25 per centum of the statutory minimum.

b. Such application shall also be certified by DVR indicating that the worker is a multi-handicapped individual or other individual whose earning capacity is so severely impaired that he/she is unable to engage in competitive employment.

4. The application shall be signed jointly by the employer and the worker and be submitted to the Commissioner by the employer.

RULE III

SPECIAL PROVISIONS APPLICABLE TO HANDICAPPED TRAINEES

1. Employment of trainees, pursuant to existing vocational rehabilitation laws, under a temporary license or a special license shall be governed by this part of this regulation.

2. Temporary license authorizing the employment of such trainees at wages lower than the statutory minimum wage but not less than 50 per centum of such wage and which are commensurate with those paid non-handicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work may be issued when employment at such lower rate is necessary in order to prevent curtailment of opportunities for employment. Such temporary licenses are to be issued by duly designated representatives of DVR.

3. The temporary license issued will designate the employer, the trainee, and the special minimum wage rate. The temporary license will be valid for a period not to exceed 90 calendar days from the date of the issuance and may not be issued retroactively.

4. Within 15 calendar days after issuance of a temporary license, DVR will forward a copy of the license together with a recommendation covering the special minimum rates for the balance of the training period to the Commissioner. Such recommendation shall not be for wage which is less than is authorized under this part of this regulation. The Commissioner, pursuant to this part of this regulation, may then issue a special license effective upon the expiration of the temporary license, or may terminate the temporary license prior to its expiration date, with or without issuing a superseding special license. If a temporary license is terminated prior to its expiration date without the issuance of a superseding special license, the Commissioner shall provide written notice of such termination to the employer, the trainee, and DVR.

5. When a special license authorizing a wage rate of less than 50 per centum of the statutory minimum wage is considered necessary, DVR may request that such license be issued by the Commissioner. Such a request shall be accompanied by supporting information, including DVR's certification that the handicapped worker is a multi-handicapped individual or other handicapped individual whose earning capacity is so severely impaired that he/she is unable to engage in competitive employment.

6. Maintenance cost for the purposes of training, evaluation and apprenticeship program under the sponsorship of DVR is authorized in lieu of wages for the trainee.

As used herein "maintenance" means payments, not exceeding the estimated cost of subsistence and provided at any time from the date of initiation of vocational rehabilitation services through the provision of post-employment services, to cover a handicapped individual's basic living expenses, such as food, shelter, clothing, and other subsistence expenses necessary to derive the full benefit of other vocational rehabilitation services being provided in order to achieve such individual's vocational rehabilitation objective or to enable an extended evaluation of such individual's rehabilitation potential.

7. A temporary license shall be issued for a trainee if a satisfactory training opportunity for the desired training is available in the community at the minimum wage applicable under the Act or above.

RULE IV

CONDITIONS FOR ISSUING SPECIAL LICENSE

1. A special license may be issued if the application is in proper form and sets forth facts showing:

a. A special minimum wage is necessary to prevent curtailment of the worker's or trainee's opportunities for employment.

b. The earning or productive capacity of the worker for the work he/she is to perform is impaired by age or physical or mental deficiency or injury.

c. Any other information the Commissioner or his/her authorized representative may require, including the requirement that the worker take a medical examination.

RULE V

ISSUANCE/DENIAL OF A LICENSE

1. If the application and other available information indicate that all established requirements have been met, the Commissioner shall issue a license. Otherwise, the Commissioner shall deny issuance of a license.
2. If issued, copies of the license shall be transmitted to the employer and the worker or trainee, and, in the case of a license for a trainee, to DVR. If license is denied, the same parties shall be given written notice of the denial.
3. A license may not be issued retroactively.

RULE VI

TERMS AND CONDITIONS OF A LICENSE

1. A license shall specify, among other things, the following:
 - a. The name of the worker or trainee.
 - b. The occupation in which he/she is to be employed.
 - c. The special minimum wage rate(s) to be paid.
 - d. The period(s) of time during which such rate(s) may be paid.
2. A license shall be effective for a period to be established by the Commissioner or his authorized representative. Workers or trainees may be paid special minimum wages only during the effective period of the license.

3. The wage rate(s) established in the license shall be fixed at a figure designed to reflect adequately the individual worker's or trainee's earning or productive capacity. No wage rate shall be fixed at less than 75 per centum of the statutory minimum wage unless, after investigation a lower rate is clearly justified. Such lower rate shall not be less than 50 per centum of the statutory minimum wage, except for individuals certified by DVR as having earning capacity so impaired that they are unable to engage in competitive employment, but in no event shall such wage rate be less than 25 per centum of the statutory minimum wage nor less than is commensurate with wages paid non-handicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

4. In an establishment or a vicinity where non-handicapped employees are employed at piece rates in the same occupation, the handicapped worker or trainee shall be paid at least the same piece rates. The worker or trainee must be paid his/her full piece rate earnings or the earnings at the hourly rate specified in the license, whichever is greater.

5. The worker or trainee shall be paid not less than one and one-half times the regular rate at which he/she is employed for all hours worked in excess of the maximum workweek applicable to him/her under Section 46005 of the Act.

6. No provision of these rules and regulations, or of any license issued in accordance with these rules and regulations, shall excuse non-compliance with any Federal or Territorial law establishing higher standards.

7. The terms and conditions of any license may be amended by the Commissioner or his/her authorized representative upon written notice to the parties concerned, if the facts justify such amendment.

RULE VII

RENEWAL OF A LICENSE

1. Application for renewal of any license shall be filed in the same manner as an original application.

2. The application shall be submitted no later than 15 calendar days and no earlier than 30 calendar days prior to the expiration of the existing license.

3. If an application for renewal is properly and timely filed prior to the expiration date of an existing license shall remain in effect until the application for renewal has been granted or denied.

RULE VIII

RECORDS TO BE KEPT

Every employer who employs a handicapped worker or handicapped trainee pursuant to these rules and regulations shall keep, maintain, and have available for inspection by the Commissioner or his/her authorized representative a copy of the license and all other records, as applicable, required under the provisions of Rule XIX of these rules and regulations and Rule IV, of Wage and Hour Division Rules and Regulations, issued under the authority of Executive Order Number 61-14, dated May 17, 1961.

PART III

EMPLOYMENT OF HANDICAPPED WORKERS/CLIENTS IN SHELTERED WORKSHOPS

RULE IX

BOARD OF CONTROL FOR VOCATIONAL REHABILITATION OF SHELTERED WORKSHOPS

1. The Board of Control for Vocational Rehabilitation appointed periodically by the Governor shall advise and make recommendations to the Commissioner concerning the administration and enforcement of these rules and regulations and the need for amendments thereof from

time to time and for such other purposes as may be desired by the Commissioner.

2. The Commissioner or his/her authorized representative may notify the Board prior to the denial or cancellation of any special license under Rule XIV, XVI, or XX and may afford the Board 15 calendar days or such additional time as he/she may allow, to present its views. The Commissioner or his/her authorized representative may also afford the Board an opportunity to present its views in connection with any petition for review filed under Rule XXI, any hearing held under Rule XXII or any petition for amendment of these rules and regulations.

RULE X

APPLICATION FOR A SPECIAL LICENSE FOR A WORKSHOP

1. Application for a special license for a workshop, including a work activities center, may be filed by any sheltered workshop with the Department. Application forms may be obtained from the Commissioner.

2. The application shall contain answers to all of the questions presented on the form, including, among other things, the following:

a. A description of the nature of the disabilities of the persons served by the workshop.

b. A description of the types of employment and the program provided by the workshop.

c. The earnings of each handicapped worker engaged in the work.

3. The application shall be signed by the President of the Board, or corresponding official, and a duly authorized officer of the workshop.

4. A workshop applying for a license, for the first time, which does not have individual earnings records on which to establish an appropriate license rate, may be issued a temporary license under the terms and conditions applicable to work activities centers, as it is defined under Rule I, and if meets all of the requirements listed below, and presents

satisfactory evidence that all of its clients will be compensated at wages which are equitable compensation for them.

a. No sheltered workshop or separate department thereof shall qualify as a work activities center if the average productivity per handicapped worker is \$1,771 or more per year as measured by dividing the total annual earned income of the work program, less the cost of purchased materials used, by the average number of clients in the work program. The average number of clients shall be determined by taking the average of the total number of clients in the work program on the last day of each quarter in the previous fiscal year, provided such average is representative of the average number of clients employed during the entire year. No individual worker whose productivity substantially exceeds this average shall be employed at less than the statutory minimum wage under a work activities center license. A handicapped worker, whose productivity substantially exceeds the average, may be licensed under provisions of rule II to VII of these rules and regulations, as applicable, in rare and unusual cases where necessary to avoid extreme hardship, if he/she is unable to earn the statutory minimum because of his/her handicap, and if his/her production and earnings are included in the averages provided in this paragraph. Where information is not available for a year, a temporary license for not more than six (6) months may be issued based on the limited information available, if it is represented that expects and has good reason to believe that the condition specified herein will be satisfied when one (1) year's data are available. Information to be considered will include the severity of disability of the handicapped workers employed, or other pertinent factors.

RULE XII

APPLICATION FOR A SPECIAL INDIVIDUAL RATE

1. A workshop may apply with the Commissioner at the time of applying for a license, or during the life of a license, for an individual rate for a handicapped worker who is unable to earn the applicable license rate. Application forms may be obtained from the Commissioner.
2. The application shall contain answers to all of the questions presented on the form, including, among other things, the following:

- a. Information on the nature of the individual's disability.
- b. The extent to which it impairs his/her earning capacity.
- c. Justification for a lower individual rate based on productivity records maintained as required under Rule XIX, 1b.

3. In the case of a request for an individual rate below 50 per centum of the statutory minimum wage rate, the application in addition shall contain evidence of DVR's certification that the individual's earning capacity is so severely impaired that he/she is unable to engage in competitive employment. Such certification shall be based on an evaluation report made upon recent completion or shortly before such completion of an evaluation or training program as defined in Rule I, 12 and 13. If an application for an individual rate below 50 per centum of the statutory minimum wage rate is filed prior to the expiration of the license authorizing the evaluation or training program, that license authority will be continued for the applicant until action is taken on the application. For clients entering a regular work program from a work activities center, a productivity report as required by Rule XIX, 1b., covering the most recent 3-month employment period constitutes an acceptable evaluation report.

RULE XIII

CRITERIA FOR CONSIDERATION IN ISSUANCE OF A SPECIAL LICENSE

1. The following criteria may be considered by the Commissioner or his/her authorized representative in determining the necessity of issuing a special license and the conditions to be specified therein:

- a. The present and previous earnings of handicapped workers of the workshop engaged in work covered by existing Federal and/or Territorial Vocational Rehabilitation laws.

- b. Whether the individual handicapped workers are being paid wages commensurate with those paid non-handicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

c. The nature and extent of the disabilities of individuals served by the workshop.

d. The wages of non-handicapped workers employed in private industry engaged in work comparable to that performed in the workshop.

e. The types and duration of medical, education, therapeutic, social work, and other rehabilitative services given to handicapped workers.

f. The extent to which the handicapped workers share, through wages, in the receipts for work done in the workshop.

g. The extent to which the handicapped workers may be learners or otherwise inexperienced.

h. The extent to which earned operating income, other than normal depreciation allowances, is used for capital expenditures for equipment, buildings, or expansion of activities in situations where the adequacy of the wage rates proposed by the workshop cannot clearly be established.

i. Whether there exists any workshop-customer arrangement or subcontract agreement which constitutes an unfair method of competition in commerce and which tends to spread or perpetuate substandard wage levels.

j. Whether in the case of non-government operated workshops, the organization has obtained an exemption under Section 650.31, Title V Non-profit Cooperative Associations, Civil Code of Guam and has registered as a non-profit organization with the appropriate local governmental agency(ies) providing for such registration.

2. In addition, the following criteria will be considered in determining the advisability of issuing a special license for a training or evaluation program:

a. Whether there is competent instruction or supervision.

b. Whether there is a written curriculum and plan of procedures designed to obtain the objectives of the program.

c. Whether there are written records made at periodic intervals of not more than 3 months, showing progress of individual clients.

d. Whether in the case of a training program, there is a progression of rate increases as the trainee successfully advances through the steps of the program. The progression of rate increases should be geared to at least the statutory minimum wage rate if the worker is being trained for competitive employment, or to at least the license rate if he/she is being trained for workshop employment.

RULE XIV

ISSUANCE OF SPECIAL LICENSE

1. Upon consideration of the criteria specified in rule XIII and if all applicable requirements of these rules and regulations are satisfied, the Commissioner or his/her authorized representative may issue a special license.
2. If a special license is issued, a copy shall be sent to the workshop. If denied, the workshop shall be notified in writing of the denial and the reasons therefore.
3. A special license may be issued for the entire workshop, a department of the workshop, a work activities center, a training or evaluation program, and individual handicapped worker or any combination thereof.
4. No special license will be issued when abnormal labor conditions, such as a strike, a lockout, or other similar condition exists at the workshop for which such license is requested.

RULE XV

TERMS AND CONDITIONS OF SPECIAL LICENSES

1. A special license shall specify the terms and conditions under which it is granted.
2. A special license shall apply to every handicapped worker in the sheltered workshop or department thereof, for which the special license is granted.

3. A special license shall be effective for a period to be established by the Commissioner or his/her authorized representative. Handicapped workers may be paid wages lower than the statutory minimum wage rate only during the effective period of a special license.

4. Except for special licenses for work activities centers and for training or evaluation programs, and unless a lower special individual rate has been authorized on the basis of an application under Rule XII, 3, a special license shall provide a minimum wage, or different minimum wage for different departments, but none of them shall be less than 50 per centum of the statutory minimum wage rate. It may provide a minimum wage lower than the statutory minimum wage rate, for a specified period(s), designated as "learning period(s)."

Such rate may apply during the specified learning period(s) to a handicapped worker who has never previously worked in the workshop, or who is transferred to a skill or semi-skilled job in the workshop at which he/she has never previously worked, or who has returned to the workshop after such period of separation as would require relearning.

5. A special license issued to a work activities center or for a training or evaluation program need not set a minimum wage, other than required in 6 and 7 of this Rule.

6. The wage rates paid handicapped workers working at time rates shall be commensurate with those paid non-handicapped workers in the vicinity in industry maintaining approved labor standards for essentially the same type, quality, and quantity of work.

7. The wage rates paid handicapped workers working at piece rates shall not be less than prevailing piece rates paid non-handicapped employees in the same work in the vicinity in industry maintaining approved labor standards. In the absence of industry piece rates, time studies or other tests may be used by the workshop to establish piece rates. Such time studies should be made with non-handicapped persons, although handicapped workers may be used in those situations where they are not handicapped for the type of work being tested and their production is comparable to that of non-handicapped persons of average ability. The base hourly rate used in making time studies must be not less than the prevailing rate in industry for work requiring similar skill. Each handicapped worker working at piece rates must be paid his/her full piece-rate earnings. Pooling of earning is not permitted except where piece rates cannot be established for each individual worker, e.g., in a team operation where each worker's individual contribution to the finished product cannot be separately tallied.

8. A special license may provide a lower individual minimum wage for a handicapped worker unable to earn the workshop or applicable department minimum wage. Such individual minimum wage may not be set at less than 50 per centum of the statutory minimum wage rate except for a handicapped worker whose earning capacity is so severely impaired that he/she is unable to engage in competitive employment as certified by DVR. The individual minimum wage for a handicapped worker so certified may not be less than 25 per centum of the statutory minimum wage rate.

9. Handicapped worker in the workshop shall be paid not less than one and one-half times the regular rate for all work in excess of minimum workweek applicable under Section 46005 of the Act.

10. A special license shall provide that the workshop may not compete unfairly in obtaining subcontract work or in the sale of its products.

11. No worker or client shall be hired under a license under rules and regulations while abnormal labor conditions such as a strike, a lock-out, or other similar condition, exists in the workshop for which such license is issued.

12. Each handicapped worker in a workshop shall be informed promptly and in writing of the license rate applicable to him/her and of the terms of the license. Such information may be provided by a notice in the handicapped worker's pay envelope, or other suitable method.

13. The terms of any special license may be amended for cause, upon request of the sheltered workshop or handicapped worker, or upon the initiative of the Commissioner or his/her authorized representative.

RULE XVI

RENEWAL OF SPECIAL LICENSE

1. Application may be filed for renewal of any special license. The application for renewal shall be submitted not later than 15 calendar days and no earlier than 30 calendar days prior to the expiration of the existing license.

2. If an application for renewal has been properly and timely filed, the existing license shall remain in effect until the application for renewal has been granted or denied.

3. Handicapped workers may be paid wages less than the statutory minimum wage rate after notice that the application for renewal has been denied, if review of such denial is requested in accordance with Rule XXI. Provided, however, that if the denial is affirmed on review, the sheltered workshop shall reimburse any person covered by the special license in an amount equal to the difference between the applicable minimum wage rate and any lower wage paid such person subsequent to the effective date of denial.

RULE XVII

STAFF WORKERS IN SHELTERED WORKSHOPS

No individual who is not a handicapped worker or client within the meaning of Rule I, 3 and 4 shall be employed under any special license issued pursuant to these rules and regulations at wages lower than the statutory minimum wage rate.

Staff jobs are clearly identified as such where the duties include supervision of others or a high degree of responsibility such as office manager, bookkeeper or truck driver, except that truck drivers may be considered as clients in workshops serving alcoholics where it is the practice to select drivers (also called crew leaders) from among the handicapped workers. Some jobs, such as some office and telephone soliciting jobs, are not clearly either staff or client jobs and may be filed by either depending on the policy and practices of the workshop. Where handicapped worker status is indicated for such borderline workers on an application substantiating information may be requested, such as evidence of the use of screening procedures which are ordinarily required for handicapped workers, such as a medical examination, psychological and aptitude testing, etc., the use of rehabilitation services offered by the workshop, and an attempt by the workshop in industry.

RULE XVIII

INDUSTRIAL HOMEWORK

A special license issued pursuant to these rules and regulations, authorizes a sheltered workshop to employ a handicapped worker in or about a home, apartment, tenement, or room in a residential establishment without the necessity of obtaining a special industrial homemaker's license for such persons under regulations of the Commissioner governing the employment of industrial homeworkers; nor shall it be necessary for a sheltered workshop to obtain a special industrial homemaker's license for handicapped workers working in or about a home, apartment, tenement, or room in a residential establishment, who are earning the statutory minimum wage rate.

RULE XIX

RECORDS TO BE KEPT

1. Every sheltered workshop shall maintain and have available for inspection by the Commissioner or his/her authorized representative records of:

a. Disability, which show the nature of the handicapped worker's disability. Non-obvious disabilities must be substantiated by medical or psychiatric reports or results of psychological test, as appropriate.

b. Productivity, which show the productivity of each handicapped worker on a continuing basis or at periodic intervals not exceeding six (6) months. Piece rate or other records which show productivity on a continuing basis must also show the average expected production for a non-handicapped person and either the piece rate paid in commercial industry or the average expected earnings of a non-handicapped person for the production shown. Where productivity is measure by means of progress reports, records must relate the worker's performance to that of a non-handicapped person receiving the prevailing wage in industry for similar work or work requiring similar skills. Records of time studies made to establish piece rate must be kept.

c. Learning periods, when such periods are authorized by the license which show the daily hours worked by each handicapped worker during the learning period(s), and the cumulative total of such hours.

d. When evaluation or training periods are authorized by the license records designating which workers are evaluatees and which are trainees, and the total period of time they have been in such a category.

e. When a sheltered workshop holds both a work activity center license and a regular program license, records showing which workers are under each license.

f. Records showing the handicapped workers for whom special individual rates have been authorized.

g. Pricing of work, which show that part of the unit prices which are allocated to direct labor (labor rate) and the average expected earnings of non-handicapped workers at a normal expected production rate. Records of time studies made to establish prices must be kept.

h. Documents relating to DVR's certification including copies of training or evaluation agreements, authorizations for extensions of such periods, progress reports made during such periods, and evaluation or other reports on which a judgment relating to certification was made.

i. In addition, the records required under Rule VIII of these rules and regulations, except that any provision pertaining to homeworker's handbooks shall not be applicable to handicapped workers of a sheltered workshop working in or about a home, apartment, tenement, or room in a residential establishment.

j. Every sheltered workshop having workers who are entitled to benefits under existing Federal and/or Territorial Vocational Rehabilitation laws shall at all times post a poster, as prescribed by the Commissioner, in a conspicuous place in the workshop where it may be observed readily by the handicapped workers and other workers in the workshop.

k. Records required under this Rule shall be preserved for a period of at least two (2) years.

RULE XX

CANCELLATION OF A SPECIAL LICENSE

1. The Commissioner or his/her authorized representative may cancel any special license for cause. A special license may be cancelled –

a. As of the date of issuance, if it is found that fraud has been exercised on obtaining the special license or in permitting a handicapped worker to work thereunder;

b. As of the date violation, if it is found that any of the provisions existing Federal and/or Territorial Vocational Rehabilitation laws or of the terms of the special license have been violated; or

c. As of the date of notice of cancellation, if it is found that the special license is no longer necessary in order to prevent curtailment of opportunities for employment, or that the requirements of these rules and regulations have not been complied with.

2. If a petition for review is filed under Rule XXI, the effective date of the cancellation shall be postponed until action is taken thereon. Provided, however, that if the cancellation order is affirmed on review, the workshop shall reimburse any person covered by the special license in an amount equal to the difference between the applicable minimum wage and any lower wage paid such person subsequent to the effective date of cancellation.

3. Except in cases of willfulness or those in which the public interest requires otherwise, before any special license shall be cancelled, facts or conduct which may warrant such action shall be called to the attention of the sheltered workshop in writing and it shall be afforded an opportunity to demonstrate or achieve compliance with all lawful requirements.

RULE XXI

REVIEW OF ACTION

1. Any person aggrieved by an action of an authorized representative of the Commissioner taken pursuant to these rules and regulations may, within 45 calendar days after such action, file with the Commissioner a request for review of the action in question.
2. The request shall be in written form setting forth grounds for seeking the review.
3. If the request is granted by the Commissioner, the Commissioner or an authorized representative who took part in the action under review, may, to the extent he/she deems it appropriate, afford other interested persons an opportunity to present data and views.
4. Based on the results of the review, the Commissioner shall render a decision on the matter.

RULE XXII

SUBMISSION OF INFORMATION, INVESTIGATIONS, AND HEARINGS

The Commissioner or his/her authorized representative may require at any time the submission of such information, other than that specified elsewhere in these rules and regulations, as is deemed appropriate or may conduct an investigation, which may include a hearing prior to taking any action pursuant to these rules and regulations. To the extent he/she deems appropriate, the Commissioner or his/her authorized representative may provide an opportunity to other interested persons to present data and views.

RULE XXII

ISSUANCE OF LICENSE FOR EXPERIMENTAL PURPOSES

In addition to the issuance of license as provided in these rules and regulations, the Commissioner may authorize the issuance of licenses to permit employment of handicapped workers in competitive employment or handicapped workers or clients of a sheltered workshop at less than the statutory minimum wage rate as part of experimental programs to increase employment opportunities for such persons. Such licenses shall be issued in such types of cases and on such terms and conditions within the scope of Section 46011 of the Act as the Commissioner shall determine will best further any such experimental program.

RULE XXIV

RELATION TO OTHER LAWS

Nothing contained in these rules and regulations shall be construed as authorizing any act that is contrary to any Federal or Territorial law.

GOVERNMENT OF GUAM
Office of the Governor
Agana, Guam

EXECUTIVE ORDER NO. 84-17

**DEPARTMENT OF LABOR
WAGE AND HOUR COMMISSIONER'S RULES AND REGULATIONS
GOVERNING SUBMINIMUM WAGE FOR APPRENTICES, STUDENT
LEARNERS AND FULL-TIME STUDENTS**

(PL 5-143 Section 46012, Government Code of Guam, as amended)

WHEREAS, Section 46012 and 46014 of Title XLII, Chapter I, Minimum Wage and Hour Act, Government Code of Guam, authorizes the Wage and Hour Commissioner to provide by regulations for the employment of apprentices, of student learners, and of full-time students in retail on service establishments, or in agriculture, under special certificates issued pursuant to regulations of the Commissioner, at such wages lower than the minimum wage rate applicable under Section 46004, and subject to such other limitations as the Commissioner may find appropriate, in order to prevent curtailment of opportunities for employment and training and to safeguard the minimum wage rate under the Act; and

WHEREAS, the Wage and Hour Commissioner, following a public hearing held on May 18, 1984, pursuant to Section 46012 of Title XLII and Chapter III, Title XXV (PL 13-40), of the Government Code of Guam, has prescribed the attached Rules I through XIV providing for the administration and enforcement of Section 46012 of the Act;

NOW, THEREFORE, I, RICARDO J. BORDALLO, Governor of Guam, hereby order the following:

1. The attached Subminimum Wage for Apprentices, Student Learners and Full-Time Students Rules and Regulations, as prescribed by the Wage and Hour Commissioner, are approved and promulgated, and shall be effective upon filing with the Legislative Secretary.

Dated at Agana, Guam this 26th day of June, 1984.

/s/RICARDO J. BORDALLO
Governor of Guam

COUNTERSIGNED:

/s/ EDWARD D. REYES
Lieutenant Governor of Guam

WAGE AND HOUR DIVISION
DEPARTMENT OF LABOR
GOVERNMENT OF GUAM

PART I

RULES AND REGULATIONS

***SUBMINIMUM WAGE FOR APPRENTICES, STUDENT LEARNERS AND
FULL-TIME STUDENTS***

AUTHORITY: Under and by virtue of the authority conferred upon the Wage and Hour Commissioner by Title XLII, Fair Labor Standards, Chapter I, Minimum Wage and Hour Act, Section 46006, 46012, and 46014, Government Code of Guam, and every other powers thereunto enabling, the Commissioner, in order to prevent curtailment of opportunities for employment and to safeguard the minimum wage rate provided in Section 46004 or the Act, hereby issues, subject to the approval of the Governor and promulgation by Executive Order, the following rules and regulations, having the force and effect of law, relating to the employment of apprentices, of student learners, and of full-time students in retail or service establishments, or in agriculture, under special certificates issued pursuant to regulations of the Commissioner, at such wages lower than the minimum wage rate applicable under Section 46004, and subject to such other limitations as the Commissioner may find appropriate.

PURPOSE: The intended purpose and objectives of the law and these rules and regulations are to advance and provide opportunities for employment and training in occupations and to safeguard the minimum wage rate provided in the Minimum Wage and Hour Act.

GENERAL: The Commissioner, to the extent necessary in order to prevent curtailment of opportunities for employment, may issue "Special Certificates" for the employment of apprentices, of student learners and of full-time students in an occupation at such wages lower than the minimum wage rate applicable under Section 46004 and pursuant to regulations issued by the Commissioner and subject to the following limitations:

A. (1) "Special Certificates" for the employment of apprentices in skilled trades may be issued at a wage rate not less than 85 per centum of the statutory minimum wage rate nor less than 50 per centum of the

journeyman's rate over the period of apprenticeship, whichever is greater.

(2) "Special Certificates" for the employment of "student learners" (regardless of age but in compliance with applicable child labor laws) on a part-time basis may be issued at a wage rate not less than 85 per centum of the statutory minimum wage rate nor less than 50 per centum of the established prevailing industry rate at the entry level of the occupation in which the student learner is to be trained, whichever is greater.

(3) "Special Certificates" for the employment of "full-time students" in retail or service establishments, or in agriculture (regardless of age but in compliance with applicable child labor laws) may be issued at a wage rate not less than 85 per centum of the statutory minimum wage rate.

B. Special Provisions:

(1) All applications for "Special Certificates" shall be made to the Commissioner.

(2) A "Special Certificate" shall not be issued where there are outstanding violations involving the employer for whom a "Special Certificate" is being requested, or where there are any outstanding violations of a "Special Certificate" previously issued, or where there have been any violations of the Act which provide reasonable grounds to conclude that the terms of a "Special Certificate" may not be complied with, if issued.

(3) The terms of any "Special Certificate," including the wage specified therein, may be amended for cause by the Commissioner upon written notice to the parties concerned, if the facts justify such amendment.

(4) No "Special Certificate" shall be issued retroactively.

(5) The Commissioner may conduct an investigation, which may include a hearing, prior to issuing or denying an application for a "Special Certificate." To the extent deemed appropriate, the Commissioner may provide an opportunity to other interested persons to present data and views on the application prior to granting or denying a "Special Certificate".

C. (1) **Records:** In addition to all other records required under the applicable rules and regulations for which the “Special Certificate” is being issued, the employer shall maintain all other applicable records required under the Wage and Hour Rules and Regulations issued under the authority of Executive Order No. 61-14, dated May 17, 1961; and for “Special Certificates” involving persons under 18 years of age, applicable records required under the Child Labor Rules and Regulations issued under the authority of Executive Order No. 75-47, dated December 1, 1975.

D. **Reconsideration and Review:**

(1) Any person aggrieved by the action of the Commissioner in denying or granting a “Special Certificate” may, within 15 days after such action, file a written request for reconsideration thereof.

(2) A request for reconsideration shall be accompanied by a statement of the additional evidence which the applicant believes may materially affect the decision together with a showing that there were reasonable grounds for failure to present such evidence in the original proceeding.

(3) A request for review shall be granted where reasonable grounds for the review are set forth in the request.

(4) If a request for reconsideration or review is granted, the Commissioner may, to the extent deemed appropriate, afford other interested persons the opportunity to present data and views.

E. (1) **Relation to Other Laws:** No provision of these rules and regulations or of any order thereunder shall excuse noncompliance with any Federal or Territorial laws establishing a minimum wage higher than the minimum wage established under these rules and regulations or a maximum workweek lower than the maximum workweek established under these rules and regulations, and no provision of these rules and regulations relating to the employment of child labor shall justify noncompliance with any Federal or Territorial laws establishing a higher standard established under these rules and regulations. No authority granted by these rules and regulations shall excuse noncompliance with higher standards applicable to full-time students which may be established under any Federal law, Territorial law, or union or other agreement.

F. (1) **Severity of Provisions:** If any provision of these rules and regulations or the application of such provision to any person or

circumstances is held invalid, the remainder of these rules and regulations and the application of such provision to other persons or circumstances shall not be affected thereby.

RULE I

DEFINITIONS

1. “Act” means the Fair Labor Standards, Minimum Wage and Hour act of Guam.
2. “Agriculture” includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any other practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.
3. “Apprentice,” “Apprenticeship Program,” “Bona fide Vocational Training Program,” and “Student Learner,” mean the same as the terms are defined in the Wage and Hour Regulations promulgated under Executive Order No. 61-14.
4. “Bona Fide Educational Institution” ordinarily means an accredited institution. However, a school which is not accredited may be considered a “bona fide educational institution” in exceptional circumstances such as when the school is too recently established to have received accreditation.
5. “Commissioner,” “Employ,” “Employer,” “Employee,” “Wage,” and “Week,” mean the same as the terms are defined in Section 46003, Chapter I, Title XLII, Fair Labor Standards, Government of Guam.
6. “Establishment” means an economic unit where distinct and separate economic activities are performed at a single physical location and where business is conducted or where services or industrial operations are performed.

7. **“Full-time student”** means a student who receives primarily daytime instruction at the physical location of a bona fide educational institution, in accordance with the institution’s accepted definition of a full-time student. A full-time student retains that status during the student’s Christmas, summer and other vacations. An individual who was such a student prior to vacation will be presumed not to have discontinued such status during vacation.

8. **“Goods”** means goods, wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

9. **“Industry”** means a trade, business, industry, or other activity, or branch or group thereof, in which individual are gainfully employed.

10. **“Produced”** means produced, manufactured, mined, handled, or in any other manner worked on in the Territory of Guam; and, for the purposes of these rules and regulations, an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in the Territory of Guam.

11. **“Resale”** shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance, provided that the sale is recognized as a bona fide retail sale in the industry.

12. **“Retail or Service Establishment”** means a distinct physical place of business engaged in selling goods and/or services to the general public which meets the following tests:

(a) At least 75 percent of the establishment’s annual dollar volume of sales of goods or services is not for resale; and,

(b) At least 75 percent of such annual dollar volume of sales of goods or services is recognized as retail sales in the particular industry.

13. **“Sale”** or **“Sell”** includes any sale, exchange, contract to sell, consignment for sale, shipment for sale or other disposition.

PART II

SUBMINIMUM WAGES FOR APPRENTICES

RULE II

APPLICATION FOR SPECIAL CERTIFICATE

1. The application shall include: (a) an apprenticeship program and (b) an apprenticeship agreement between the employer and the employee which conform with the standards of apprenticeship as set forth under Rule I (Q) of the Wage and Hour Division Rules and Regulations, issued under the authority of Executive Order Number 61-14, dated May 17, 1961.
2. The application shall be signed by the employer and the employee for whom the apprenticeship certificate is being requested and submitted to the Commissioner by the employer.

RULE III

CONDITIONS FOR ISSUANCE OR DENIAL OF CERTIFICATE

1. If the apprenticeship agreement and other available information show that the requirements of Rule II above are satisfied, the Commissioner, to the extent necessary to prevent a curtailment of employment opportunities, shall issue a special certificate authorizing the employment of such apprentice in the trade at wages lower than the minimum wage and conforming with the purpose, intent and general provisions set forth and defined in Part I of these rules and regulations on wage rate floor levels for the employment of apprentices. Otherwise, the application shall be denied.
2. If issued, copies of the certificate shall be transmitted to the employer and the apprentice. If the certificate is denied, the same parties shall be given written notice of the denial.

RULE IV

TERMS OF SPECIAL CERTIFICATE

1. Each special certificate shall specify the conditions and limitations under which it is granted, including the name of the apprentice, the skilled trade in which he is to be employed, the subminimum wage rates and the period of time during which wage rates may be paid.

RULE V

RECORDS TO BE KEPT

An employer who employs an apprentice pursuant to these rules and regulations shall keep, maintain, and have available for inspection by the Commissioner or his authorized representative a copy of the certificate and all other records, as applicable, required under the provisions of C(1), Part I and Rule II, Part II of these rules and regulations.

PART III

SUBMINIMUM WAGES FOR STUDENT LEARNERS

RULE VI

APPLICATION FOR SPECIAL CERTIFICATE

1. Application shall be made in duplicate on the official form furnished by the Commissioner and shall be signed by the employer; the appropriate school official and the student-learner.
2. The application must contain all information required by such form, including a statement clearly outlining the vocational training program and showing, particularly, the processes in which the student-learner will be engaged when in training on the job; a statement clearly

outlining the school instruction directly related to the job; the total number of workers employed in the establishment; the number and hourly wage rate of experienced workers employed in the occupation in which the student-learner is to be trained; the hourly wage rate or progressive wage schedule which the employer proposes to pay student-learner; data regarding the age of the student-learner; the period of employment training at subminimum wages; the number of hours of employment training a week; the number of hours of school instruction a week; and a certification by the appropriate school official that the student named therein will be receiving instruction in an accredited school or college or university and will be employed pursuant to a bona fide vocational training program, as referenced in Rule I, Part I of these rules and regulations.

RULE VII

CONDITIONS FOR ISSUANCE OR DENIAL OF CERTIFICATE

The following conditions shall be satisfied before a special certificate may be issued authorizing the employment of a student-learner at subminimum wages:

(a) Any training program under which the student-learner will be employed must be a bona fide vocational training program as defined in Rule I, Part I of these rules and regulations;

(b) The employment of the student-learner at subminimum wages authorized by the special certificate must be necessary to prevent the curtailment of employment opportunities;

(c) The student-learner must be at least 16 years of age (or older as may be required by the Child Labor Law, Chapter III, Title XLII Fair Labor Standards, Government Code of Guam, and Wage and Hour Regulations for the implementation of Public Law 12-84, issued under authority of Executive Order 75-47, dated December 1, 1975);

(d) The occupation for which the student-learner is receiving preparatory training must require a sufficient degree of skill to necessitate a substantial learning period;

(e) The training shall not be for the purpose of acquiring manual dexterity and high production speed in repetitive operations;

(f) The employment of a student-learner will not have the effect of displacing a worker's employment in the establishment;

(g) The employment of the student learner at subminimum wage will not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character;

(h) The occupational needs of the community or industry warrant the training of student-learners;

(i) The issuance of such a certificate would not tend to prevent the development of apprenticeship in accordance with the regulations applicable thereto (Part II of these rules and regulations) or would not impair established apprenticeship standards in the industry involved; and

(j) The number of student-learners to be employed in one establishment must not be more than 10% of its working force.

RULE VIII

TERMS AND CONDITIONS OF SPECIAL CERTIFICATE

1. The special minimum wage rate shall not be lower than the wage rate floor levels set forth in the general provisions of Part I of these rules and regulations for the employment of student-learners.

2. The number of hours of employment training each week at subminimum wages pursuant to a certificate, when added to the hours of school instruction, shall not exceed 40 hours.

3. When school is not in session on any school day, the student-learner may work a number of hours in addition to the weekly hours of employment training authorized by the certificate, provided that the total hours worked shall not exceed 8 hours on any such day. A notation shall be made in the employer's records that school not being in session was the reason additional hours were worked.

4. During the school term, when school is not in session for the entire week, the student-learner may work at his employment training a number of hours in the week in addition to those authorized by the certificate provided that the total hours worked shall not exceed 40 hours in any such week. A notation shall be made in the employer's records that school not being in session was the reason additional hours were worked.

RULE IX

RECORDS TO BE KEPT

In addition to any other records required under C(1), Part I of these rules and regulations, the employer shall keep the following records relating to the student-learners employed at subminimum wage rates:

(a) Any worker employed as a student-learner shall be so identified as such on the payroll records showing each student-learner's occupation and rate of pay;

(b) The employer's copy of the application filed in accordance with Rule VI, Part II of these rules and regulations and any certificate issued by the Commissioner shall be available at all times for inspection for a period of 3 years from the last date of employment of the student learner; and

(c) Notations made in the employer's records when additional hours are worked as provided in Rule VIII, Part II of these rules and regulations.

RULE X

DURATION OF SPECIAL CERTIFICATE

1. A special student-learner certificate shall be effective for a period not to exceed of one school year. No certificate shall authorize employment training beyond the date of graduation.

PART IV

SUBMINIMUM WAGES FOR FULL-TIME STUDENTS

RULE XI

APPLICATION FOR SPECIAL CERTIFICATE

1. Application shall be made in duplicate on the official form furnished by the Commissioner and shall be signed by the employer and the student to be employed.
2. The application shall contain the following: (a) information as to the type of products sold or services rendered by the establishment, proposed hours of employment, and other information for which request is made on the form; and (b) attestation by the appropriate school or educational institution official as to the full-time student status of the person to be employed.

RULE XII

CONDITIONS FOR ISSUANCE OR DENIAL OF CERTIFICATE

The following conditions shall be satisfied before a special certificate may be issued authorizing the employment of a full-time student at subminimum wages:

- (a) The employment will not curtail the full-time employment opportunities for the other workers.
- (b) The number of full-time students to be employed in one establishment shall not be more than six in any one day nor that the total number of hours of employment at subminimum wages is more than 10% of the total hours of all employees during any month, whichever is higher.
- (c) Abnormal labor conditions such as a strike or lockout do not exist at the establishment requesting a full-time student certificate.

(d) The data given on the application are accurate and based on available records.

(e) The employment does not violate the Child Labor Regulations for the implementation of the Child Labor Law (Public Law 12-84).

RULE XIII

TERMS AND CONDITIONS OF SPECIAL CERTIFICATE

1. The special minimum wage rate shall not be lower than the wage rate floor level set forth in the general provisions of Part I of these rules and regulations for the employment of full-time students.

2. No special full-time certificate shall be issued retroactively, nor for a period longer than one (1) year. It shall specify its effective and expiration dates.

3. A copy of the certificate shall be posted during its effective period in a conspicuous place or places in the establishment readily visible to all employees.

4. Full-time students shall not be permitted to work at subminimum wages for more than 8 hours a day, nor for more than 40 hours a week when school is not in session, nor more than 20 hours a week when school is in session, except that when a full-day school holiday occurs on a day when the establishment is open for business, the weekly limitation on the maximum number of hours which may be worked shall be increased by 8 hours for each such holiday but no event shall the 40 hour limitation be exceeded. School is considered to be in session for a student attending summer school.

5. Full-time students shall be employed at subminimum wages under this rule only outside of the scheduled hours of instruction of the individual students.

RULE XIV

RECORDS TO BE KEPT

In addition to any other records required under C(1), Part I of these rules and regulations, the employer shall keep the following records specifically relating to full-time students employed at subminimum wage rates:

- 1. The total hours of employment of full-time students at subminimum wages and the total hours of employment during the month of all employees in the establishment, except for those employed in agriculture who come within one of the other exceptions from the minimum wage provisions of the Minimum Wage and Hour Act.**
- 2. In addition to the attestation by the appropriate school or educational institution official verifying as to the full-time status of the student employed under subminimum wage rate, a certificate from the school the student will attend after the summer vacation shall be required.**
- 3. The records required in this rule, including a copy of any full-time student certificate issued, shall be kept for inspection for a period of 3 years.**

